

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 5, 2001

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE000343

For approval of Generation Facilities pursuant to Virginia Code § 56-580 D, or in the Alternative, for Approval of Expenditures pursuant to Virginia Code § 56-234.3 and for a certificate of Public Convenience and Necessity pursuant to Virginia Code § 56-265.2

and

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUF000021

For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia to participate in lease financing arrangements for construction of generation facilities, and for a declaration of non-jurisdiction

and

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

and

CASE NO. PUA010025

DOMINION TRANSMISSION, INC.

For approval of a pipeline construction contract and pipeline operation and maintenance agreement under Chapter 4, Title 56 of the Code of Virginia and for expedited consideration

ORDER ON AGREEMENTS

On March 12, 2001, the Commission issued its Final Order in Case No. PUE000343, authorizing Virginia Electric and Power Company ("Virginia Power" or "the Company") to construct, acquire, and operate a new 540 MW combined cycle generating unit at the Possum Point Generating Station ("the Project" or "Generating Station") in Prince William County, Virginia. Among other things, Ordering Paragraph (5) of the March 12 Order approved the financing for the Project, as modified by both the Commission's November 17, 2000 Order entered in Case No. PUF000021, and by Exhibit 1 attached to Exhibit LTO-13 filed in Case No. PUE000343.

On March 30, 2001, the Company filed a Petition for Reconsideration and Motion to Amend Final Order ("Petition") in Case Nos. PUE000343 and PUF000021. In that Petition, the Company requested that it be permitted to increase the total amount it could borrow under the synthetic lease approved in Case No. PUF000021, from \$300 million to \$370 million. Part of the requested increase in financing related to approximately \$10 million of financing for a natural gas pipeline to the Generating Station.¹

¹ In Case No. PUE000741, Virginia Power sought authority to construct a natural gas pipeline to the Possum Point Generating Station. As recited in that application, Virginia Power had selected its affiliate, Dominion Transmission, Inc. ("DTI"), to construct, operate and maintain the pipeline.

By Order dated April 2, 2001, entered in Case Nos. PUE000343 and PUF000021, the Commission granted Virginia Power's Petition to allow consideration of the issues raised therein. In its June 29, 2001 Order Granting Additional Authority, entered in those dockets, the Commission authorized Virginia Power to finance the pipeline with proceeds from the synthetic lease, provided the Company executed the O&M agreement, construction contract, and easement support agreement set out in the attachments to its letters filed with the Commission on June 27, 2001, and June 28, 2001. Ordering Paragraph (3) of the June 29, 2001 Order Granting Additional Authority directed the Company to file executed agreements with the Commission conforming to the revisions Virginia Power proposed in its June 27 and June 28 letters filed in these dockets.

On May 21, 2001, Virginia Power and DTI filed a Petition with the Commission under Chapter 4 of Title 56 of the Code of Virginia for approval of the pipeline construction contract and O&M agreement between the Company and DTI for the natural gas pipeline to the Project. This Petition was docketed as Case No. PUA010025.

In its June 20 2001 Order Granting Preliminary Approval, entered in Case (Fn. 1 cont.) No. PUE000741, the Commission authorized Virginia Power to construct, own, and operate the natural gas pipeline conditioned upon, among other things, the receipt of final Commission approval of the synthetic lease financing pending in Case No. PUF000021 and final approval of the construction contract and operating and maintenance ("O&M") agreement with DTI under consideration in Case No. PUA010025.

In its June 29, 2001 Order Granting Approval entered in Case No. PUA010025, the Commission noted that the Company had filed modifications to the construction contract and O&M agreement to address Staff's concerns about whether Virginia Power would be able to obtain and maintain ultimate control over the new gas facilities and to address the appropriate pricing to be incorporated in the agreements. Ordering Paragraph (3) of the June 29, 2001 Order provided that "[s]hould any terms and conditions of the Construction Contract or the O&M Agreement change from those approved herein, additional Commission approval shall be required for such changes." (Emphasis added.) Ordering Paragraph (7) of that Order directed Virginia Power to submit revised executed copies of the construction contract and O&M agreement, incorporating the modifications found in the documents filed with the Commission under the cover letters of counsel dated June 27, and June 28, 2001.

On July 27, 2001, the Commission granted Virginia Power's and DTI's July 26, 2001 request filed in Case No. PUA010025, for an extension of sixty (60) days in which to file their executed construction contract and O&M agreement with the Commission.

On September 27, 2001, the Company, by counsel, filed executed copies of the pipeline construction contract and O&M agreement in Case Nos. PUE000343, PUF000021, and PUA010025. The cover letter accompanying these documents noted that the subject

agreements reflected revisions to the versions previously submitted to the Commission on June 27, 2001. The letter represented that the revisions were required by the lenders under the synthetic lease financing. Counsel represented that the revisions, shown on blacklined versions of the contract, agreements and attachments, were not considered by Virginia Power and DTI to be substantive in the context of the captioned proceedings. Counsel commented that the lenders in the synthetic lease financing arrangements could require further revisions, although those anticipated revisions were also not expected to be substantive from the perspective of the referenced proceedings.

On October 4, 2001, Virginia Power, by counsel, filed final executed versions of the construction contract and O&M agreement in Case Nos. PUE000343, PUF000021, and PUA010025, and PUE000741. These documents contained additional revisions that Virginia Power and DTI did not, by representation of counsel, consider to be substantive in the context of these proceedings. The documents also included blacklined versions of the contract and O&M agreement that indicated the further revisions.

On November 5, 2001, Counsel for Virginia Power submitted a document explaining the nature of the revisions made in the documents submitted September 27, 2001, and October 4, 2001. As represented by counsel, these revisions were primarily necessary

to secure the lenders' agreement to the synthetic lease financing and to protect the lenders' interests in the Project and the natural gas pipeline. According to counsel, these revisions do not affect the conditions contained in Ordering Paragraph (2) of the Commission's June 29, 2001 Order Granting Approval in Case No. PUA010025 or any obligations imposed by the Commission's Order Granting Preliminary Approval issued June 20, 2001 in Case No. PUE000741.

NOW, UPON consideration of the foregoing, the Commission, having been advised by its Staff, is of the opinion and finds that the documents submitted by Virginia Power and DTI on September 27, 2001, and October 4, 2001, together with the explanation of the revisions contained in those documents should be treated as a request for further authority as contemplated by Ordering Paragraph (3) of the June 29, 2001 Order Granting Approval, entered in Case No. PUA010025; and that the revisions to these documents, as represented by counsel, appear to be required by the Company's lenders in order to finalize the synthetic lease arrangement.

We further find that Virginia Power remains responsible for obtaining and maintaining control of the Possum Point Generating Station facilities and the intrastate transmission pipeline; and that except for the revisions to the construction contract, O&M agreement, and subsidiary documents thereto authorized herein,

the directives set out in the June 29, 2001 Order Granting Approval entered in Case No. PUA010025, and the June 29, 2001 Order Granting Additional Authority, entered in Case Nos. PUE000343 and PUF000021, should remain in effect. If the Company and DTI desire to revise any of the provisions of the documents filed under letter of counsel dated October 4, 2001, they must seek and obtain further authority from the Commission in advance of executing the revised documents. Finally, we find that Case Nos. PUE000343, PUF000021, and PUA010025 should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

(1) Virginia Power's and DTI's request for further authority to include the revisions set out in the documents filed with the Commission on September 27 and October 4, 2001, in Case Nos. PUE000343, PUF000021, and PUA010025 is hereby granted.

(2) Virginia Power remains charged with obtaining and maintaining control of the Possum Point Project approved in Case No. PUE000343 as well as the intrastate natural gas pipeline for which Preliminary Approval was granted in Case No. PUE000741.

(3) Except for the revisions authorized herein, the directives set out in the June 29, 2001 Order Granting Approval entered in Case No. PUA010025 and the June 29, 2001 Order Granting Additional Authority, entered in Case Nos. PUE000343

and PUF000021 shall remain in effect. Virginia Power shall comply with these directives.

(4) If Virginia Power and DTI desire to revise any of the provisions of the construction contract, and O&M agreement, or the subsidiary assignments and agreements attached to the construction contract and O&M agreement, filed under cover letter of counsel dated October 4, 2001, they must seek further authority from the Commission in advance of executing any such revisions.

(5) Case Nos. PUE000343, PUF000021, and PUA010025 are hereby dismissed from the Commission's docket of active proceedings, and the papers filed therein shall be placed in the Commission's files for ended causes.